

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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Student L. DOE

Vs.

South Kingstown School Department

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### DECISION

Held: This is a special education eligibility case. The student in this case attends a private school and is entitled to receive public school special education services, including a special education eligibility determination, in accordance with R.I.G.L.16-24-1. This matter is remanded to the local school district for the creation of a new RTI plan and for a new special education evaluation once the results of the RTI plan are available.

DATE: May 21, 2013

## **Jurisdiction and Travel of the Case**

This is a special education eligibility case. While such matters normally proceed through the review process established by the Regulations of the Rhode Island Board of Regents Governing the Education of Children with Disabilities, there is no doubt that the Commissioner of Education has jurisdiction under R.I.G.L.16-39-1 and R.I.G.L. 16-39-2 to rule in this matter. In re Michael C. and the Coventry School Department et al. 487 A.2d 495 (R.I. 1985) The respondent school district's motion to dismiss this matter for lack of jurisdiction is therefore denied. The student in this case attends a private school and is entitled to receive public school special education services, including a special education eligibility determination, in accordance with R.I.G.L.16-24-1.

## **Positions of the Parties**

### **The School District**

The South Kingstown School Department contends that this matter should be dismissed for lack of jurisdiction and that in any event its determination that the student concerned in this case was not eligible for special education was correct. The school district contends that because this student made adequate progress through a Response to Intervention Plan (RTI), there has been no showing that this student is in need of special education.

### **The Petitioning Parent**

The parent contends that we should find that the student is eligible for special education services or in the alternative that we in essence direct a new evaluation of this student to determine whether or not this student is eligible for special education.

## **Discussion**

We have examined the record carefully in this matter and we conclude that with one exception the petitioner's arguments are without merit. The record does establish, however, that for practical purposes the standards to be met under this student's RTI plan were established by a teacher employed by the student's private school rather than by the South Kingstown School District. While South Kingstown gave technical assistance concerning how to construct an RTI plan, it was a teacher of the private school who prepared the RTI ("...Orton Gillingham tutor. . . wrote the RTI plan for [the] student immediately following the referral meeting."<sup>1</sup>) We think this was error. It was the school district that should have written the RTI plan and established the goals to be met under the plan. It is the school district and not personnel at the private school which must establish the criteria upon which special education decisions are made. R.I.G.L. 16-24-1

## **Conclusion**

This matter is remanded to the local school district for the creation of a new RTI plan and, once the results of the RTI plan are available, a new special education evaluation.

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Forrest L. Avila, Hearing Officer

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Date: May 21, 2013

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Deborah A. Gist, Commissioner

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<sup>1</sup> Brief of School District, page 4.